

SENATE BILL No. 407

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-8-31; IC 34-30-2-116.9.

Synopsis: Insurance product regulation compact. Provides for an interstate insurance product regulation compact.

Effective: July 1, 2004.

Paul

January 12, 2004, read first time and referred to Committee on Insurance and Financial Institutions.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 407

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 27-8-31 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 31. Interstate Insurance Product Regulation Compact

Sec. 1. The purposes of this compact are, through means of joint and cooperative action among the compacting states, to:

- (1) promote and protect the interest of consumers of individual and group annuity, life insurance, disability income, and long term care insurance products;**
- (2) develop uniform standards for insurance products covered under the compact;**
- (3) establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one (1) or more compacting states;**
- (4) give appropriate regulatory approval to product filings**



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and advertisements satisfying the applicable uniform standard;

(5) improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact;

(6) create the interstate insurance product regulation commission; and

(7) perform these and any other related functions as may be consistent with the state regulation of the business of insurance.

Sec. 2. (a) The definitions in this section apply throughout this chapter.

(b) "Advertisement" means material designed to create public interest in a product or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a policy, as more specifically defined in the rules and operating procedures of the commission.

(c) "Bylaws" mean bylaws established by the commission for the governance, direction, or control of the commission.

(d) "Commission" refers to the interstate insurance product regulation commission established by section 3 of this chapter.

(e) "Commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.

(f) "Compacting state" means a state that:

(1) has enacted this compact; and

(2) has not:

(A) withdrawn as provided in section 15 of this chapter; or

(B) been terminated as provided in section 16 of this chapter.

(g) "Defaulting state" means a compacting state that defaults, as described in section 16 of this chapter.

(h) "Domiciliary state" means the state in which an insurer is incorporated or organized, or the state of entry of an alien insurer.

(i) "Insurer" means an entity licensed by a state to issue contracts of insurance for the lines of insurance covered by this chapter.

(j) "Member" means the commissioner or the commissioner's designee.

(k) "NAIC" refers to the National Association of Insurance Commissioners.

(l) "Noncompacting state" means a state that is not a

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1 compacting state.

2 (m) "Operating procedures" mean procedures adopted by the
3 commission to implement a rule, a uniform standard, or a
4 provision of this compact.

5 (n) "Opt out" means any action by a compacting state to decline
6 to adopt or participate in a promulgated uniform standard.

7 (o) "Product" means the form of a policy or contract, including
8 an application, an endorsement, or a related form that is attached
9 to and made a part of the policy or contract, and any evidence of
10 coverage or certificate, for an individual or a group annuity, life
11 insurance, disability income, or long term care insurance product
12 that an insurer is authorized to issue in Indiana or another
13 compacting state.

14 (p) "Rule" means a statement of general or particular
15 applicability and future effect adopted by the commission,
16 including a uniform standard developed under section 8 of this
17 chapter, that is designed to implement, interpret, or prescribe law
18 or policy or that describes the organization, procedure, or practice
19 requirements of the commission, which shall have the force and
20 effect of law in the compacting states.

21 (q) "State" means a state, district, or territory of the United
22 States.

23 (r) "Third party filer" means an entity that submits a product
24 filing to the commission on behalf of an insurer.

25 (s) "Uniform standard" means a standard adopted by the
26 commission for a product line under section 8 of this chapter. The
27 term includes all the product requirements. However:

28 (1) each uniform standard shall be construed, whether express
29 or implied, to prohibit the use of any inconsistent, misleading,
30 or ambiguous provisions in a product; and

31 (2) the form of the product made available to the public shall
32 not be unfair, inequitable, or against public policy as
33 determined by the commission.

34 (t) "Withdrawing state" means a compacting state that
35 withdraws from the compact under section 15 of this chapter.

36 Sec. 3. (a) The compacting states hereby establish a joint public
37 agency known as the interstate insurance product regulation
38 commission. Under section 4 of this chapter, the commission may:

39 (1) develop uniform standards for product lines;

40 (2) receive and provide prompt review of products filed with
41 the commission; and

42 (3) give approval to product filings satisfying applicable

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uniform standards.

However, it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. This chapter does not prohibit an insurer from filing the insurer's product in a state where the insurer is licensed to conduct the business of insurance and any such filing is subject to the laws of the state where filed.

(b) The commission is a body corporate and politic, and an instrumentality of the compacting states.

(c) The commission is a nonprofit entity, separate and distinct from the individual compacting states.

(d) The commission is solely responsible for the commission's liabilities except as otherwise specifically provided in this compact.

(e) Venue is proper, and judicial proceedings by or against the commission shall be brought solely and exclusively in a court with jurisdiction where the principal office of the commission is located.

Sec. 4. The commission has the following powers:

(1) To adopt rules under section 8 of this chapter, which have the force and effect of law and are binding in the compacting states to the extent and in the manner provided in this compact.

(2) To exercise the commission's rulemaking authority and establish reasonable uniform standards for products covered under the compact and advertisement related to the products, which have the force and effect of law and are binding in the compacting states, but only for those products filed with the commission. However, a compacting state has the right to opt out of the uniform standard under section 8(d) of this chapter, to the extent and in the manner provided in this compact, and any uniform standard established by the commission for long term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the NAIC's long term care insurance model act and long term care insurance model regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the NAIC long term care insurance model act or long term care insurance model regulation adopted by the NAIC require amending the uniform standards established by the commission for long term care insurance products.

(3) To receive and review in an expeditious manner products filed with the commission, rate filings for disability income

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and long term care insurance products, and give approval of those products and rate filings that satisfy the applicable uniform standard, where the approval has the force and effect of law and be binding on the compacting states to the extent and in the manner provided in the compact.

(4) To receive and review in an expeditious manner advertisement relating to long term care insurance products for which uniform standards have been adopted by the commission, and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long term care insurance products, the commission has authority to require an insurer to submit all or any part of the insurer's advertisement with respect to that product for review or approval before use, if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the commission as provided in this section have the force and effect of law and are binding in the compacting states to the extent and in the manner provided in the compact.

(5) To exercise the commission's rulemaking authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the commission.

(6) To adopt operating procedures under section 8 of this chapter, which are binding in the compacting states to the extent and in the manner provided in this compact.

(7) To bring and prosecute legal proceedings or actions in the commission's name as the commission, provided that the standing of any state insurance department to sue or be sued under applicable law shall not be affected.

(8) To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.

(9) To establish and maintain offices.

(10) To purchase and maintain insurance and bonds.

(11) To borrow, accept, or contract for services of personnel, including employees of a compacting state.

(12) To hire employees, professionals, or specialists, elect or appoint officers, and fix their compensation, define their duties, give them appropriate authority to carry out the purposes of the compact, determine their qualifications, and

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1 establish the commission's personnel policies and programs
 2 relating to, among other things, conflicts of interest, rates of
 3 compensation, and qualifications of personnel.

4 (13) To accept any and all appropriate donations and grants
 5 of money, equipment, supplies, materials, and services, and to
 6 receive, use, and dispose of the same. At all times the
 7 commission shall strive to avoid any appearance of
 8 impropriety.

9 (14) To lease, purchase, accept appropriate gifts or donations
 10 of, or otherwise to own, hold, improve, or use any property,
 11 real, personal, or mixed. At all times the commission shall
 12 strive to avoid any appearance of impropriety.

13 (15) To sell, convey, mortgage, pledge, lease, exchange,
 14 abandon, or otherwise dispose of any property, real, personal,
 15 or mixed.

16 (16) To remit filing fees to compacting states as may be set
 17 forth in the bylaws, rules, or operating procedures.

18 (17) To enforce compliance by compacting states with rules,
 19 uniform standards, operating procedures, and bylaws.

20 (18) To provide for dispute resolution among compacting
 21 states.

22 (19) To advise compacting states on issues relating to insurers
 23 domiciled or doing business in noncompacting jurisdictions,
 24 consistent with the purposes of this compact.

25 (20) To provide advice and training to those personnel in state
 26 insurance departments responsible for product review, and to
 27 be a resource for state insurance departments.

28 (21) To establish a budget and make expenditures.

29 (22) To borrow money.

30 (23) To appoint committees, including advisory committees,
 31 comprising members, state insurance regulators, state
 32 legislators or their representatives, insurance industry and
 33 consumer representatives, and any other interested persons
 34 as may be designated in the bylaws.

35 (24) To provide and receive information from and to
 36 cooperate with law enforcement agencies.

37 (25) To adopt and use a corporate seal.

38 (26) To perform any other functions as may be necessary or
 39 appropriate to achieve the purposes of this compact consistent
 40 with the state regulation of the business of insurance.

41 Sec. 5. (a) Each compacting state shall have and be limited to
 42 one (1) member. Each member shall be qualified to serve in that

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capacity under applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which the member is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state where the vacancy exists. Nothing in this section shall be construed to affect the manner in which a compacting state determines the election or appointment and qualification of the compacting state's commissioner.

(b) Each member is entitled to one (1) vote and is entitled to an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any provision in this chapter to the contrary, no action of the commission with respect to the promulgation of a uniform standard is effective unless two-thirds (2/3) of the members vote in favor of adoption.

(c) The commission shall, by a majority of the members, prescribe bylaws to govern the commission's conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including the following:

- (1) Establishing the fiscal year of the commission.
- (2) Providing reasonable procedures for appointing and electing members and holding meetings of the management committee.
- (3) Providing reasonable standards and procedures:
 - (A) for the establishment and meetings of other committees; and
 - (B) governing any general or specific delegation of any authority or function of the commission.
- (4) Providing reasonable procedures for calling and conducting meetings of the commission and ensuring reasonable advance notice of each meeting, including:
 - (A) requiring a majority of commission members to attend a meeting;
 - (B) providing for the right of citizens to attend the meetings with enumerated exceptions designed to:
 - (i) protect the public interest;
 - (ii) protect the privacy of individuals; and
 - (iii) insure proprietary information, including trade secrets;
 - (C) allowing a meeting in camera only after a majority of the members of the commission votes to close a meeting en toto or in part, with no proxy voting; and
 - (D) providing for the commission, as soon as practicable

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after a vote to close a meeting as described in clause (C), to make public:

(i) a copy of the vote to close the meeting revealing the vote of each member; and

(ii) votes taken during the meeting.

(5) Establishing the titles, duties, authority, and reasonable procedures for the election of the officers of the commission.

(6) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission.

(7) Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees.

(8) Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment and reserving of all the commission's debts and obligations.

(d) The commission shall publish bylaws in a convenient form and file a copy of the bylaws and amendments to the bylaws with the appropriate agency or officer in each compacting state.

Sec. 6. (a) A management committee comprising not more than fourteen (14) members shall be established as follows:

(1) One (1) member from each of the six (6) compacting states with the largest premium volume for individual and group annuities, life, disability income, and long term care insurance products, determined from the records of the NAIC for the prior year.

(2) Four (4) members from those compacting states with at least two percent (2%) of the market based on the premium volume described in subdivision (1), other than the six (6) compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws.

(3) Four (4) members from those compacting states with less than two percent (2%) of the market, based on the premium volume described in subdivision (1), with one (1) selected from each of the four (4) zone regions of the NAIC as provided in the bylaws.

(b) The management committee has the authority and duties as may be set forth in the bylaws, including the following:

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(1) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission.

(2) Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard. However, a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds (2/3) of the members of the management committee.

(3) Overseeing the offices of the commission.

(4) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations to advance the goals of the commission.

(c) The commission shall annually elect officers from the management committee, with each having the authority and duties as may be specified in the bylaws.

(d) The management committee may, subject to the approval of the commission, appoint or retain an executive director for the period, upon the terms and conditions and for the compensation as the commission considers appropriate. The executive director shall serve as secretary to the commission but may not be a member of the commission. The executive director shall hire and supervise any other staff as may be authorized by the commission.

(e) A legislative committee comprised of state legislators or state legislators' designees shall be established to monitor the operations of and make recommendations to the commission, including the management committee. However, the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Before the commission adopts any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee. The commission may establish additional advisory committees as the commission's bylaws may provide for the carrying out of the commission's functions.

(f) The commission shall maintain its corporate books and records in accordance with the bylaws.

(g) The members, officers, executive director, employees, and

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representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities. However, nothing in this subsection shall be construed to protect any person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the person.

(h) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. However:

(1) nothing in this subsection shall be construed to prohibit that person from retaining the person's own counsel; and

(2) this subsection applies only if the actual or alleged act, error, or omission did not result from the person's intentional or willful and wanton misconduct.

(i) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against the person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. However, this subsection applies only if the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

Sec. 7. (a) The commission shall meet and take any actions that are consistent with this compact and the bylaws.

(b) Each member of the commission is entitled to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone

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or other means of communication.

(c) The commission shall meet at least one (1) time during each calendar year. Additional meetings shall be held as set forth in the bylaws.

Sec. 8. (a) The commission shall adopt reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of this compact. However, if the commission exercises the commission's rulemaking authority in a manner that is beyond the scope of the purposes of this chapter or the powers granted in this chapter, the action by the commission is invalid and has no force and effect.

(b) Rules and operating procedures shall be made according to a rulemaking process that substantially conforms to the principles of the model state administrative procedure act of 1981, as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committees in each compacting state responsible for insurance issues of the commission's intention to adopt the uniform standard. The commission, in adopting a uniform standard, shall fully consider all submitted materials and issue a concise explanation of the commission's decision.

(c) A uniform standard becomes effective ninety (90) days after the uniform standard's adoption by the commission or on a later date as the commission may determine. However, a compacting state may opt out of a uniform standard as provided in subsection (d). All other rules and operating procedures and amendments to the other rules and operating procedures become effective as of the date specified in each rule, operating procedure, or amendment.

(d) A compacting state may opt out of a uniform standard, either by legislation or by rule adopted by the insurance department under the compacting state's administrative procedure act. If a compacting state elects to opt out of a uniform standard by rule, the compacting state must:

(1) give written notice to the commission not later than ten (10) business days after the uniform standard is adopted or at the time the state becomes a compacting state; and

(2) find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state. The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the

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1 state that warrant a departure from the uniform standard
 2 and determining that the uniform standard would not
 3 reasonably protect the citizens of the state. The commissioner
 4 must balance, consider, and find that the conditions in the
 5 state and needs of the citizens of the state outweigh the
 6 following factors:

7 (A) The intent of the legislature to participate in, and the
 8 benefits of, an interstate agreement to establish national
 9 uniform consumer protections for the products subject to
 10 this chapter.

11 (B) The presumption that a uniform standard adopted by
 12 the commission provides reasonable protections to
 13 consumers of the relevant product.

14 However, a compacting state may, at the time of the compacting
 15 state's enactment of this compact, prospectively opt out of all
 16 uniform standards involving long term care insurance products by
 17 expressly providing for an opt out in the enacted compact, and the
 18 opt out shall not be treated as a material variance in the offer or
 19 acceptance of any state to participate in this compact. The opt out
 20 is effective at the time of enactment of this compact by the
 21 compacting state and shall apply to all existing uniform standards
 22 involving long term care insurance products and those
 23 subsequently adopted.

24 (e) If a compacting state elects to opt out of a uniform standard,
 25 the uniform standard remains applicable in the compacting state
 26 electing to opt out until the time the opt out legislation is enacted
 27 or the regulation opting out becomes effective. Once the opt out of
 28 a uniform standard by a compacting state becomes effective as
 29 provided under the laws of the state, the uniform standard has no
 30 further force and effect in the state unless and until the legislation
 31 or regulation implementing the opt out is repealed or otherwise
 32 becomes ineffective under the laws of the state. If a compacting
 33 state opts out of a uniform standard after the uniform standard has
 34 been made effective in the state, the opt out shall have the same
 35 prospective effect as provided under section 15 of this chapter for
 36 withdrawals.

37 (f) If a compacting state has formally initiated the process of
 38 opting out of a uniform standard by rule while the regulatory opt
 39 out is pending, the compacting state may petition the commission,
 40 not less than fifteen (15) days before the effective date of the
 41 uniform standard, to stay the effectiveness of the uniform standard
 42 in the compacting state. The commission may grant a stay if the

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1 commission determines the regulatory opt out is being pursued in
 2 a reasonable manner and there is a likelihood of success. If a stay
 3 is granted or extended by the commission, the stay or extension
 4 may postpone the effective date by not more than ninety (90) days,
 5 unless the stay is extended by the commission. However, a stay may
 6 not be permitted to remain in effect for more than one (1) year
 7 unless the compacting state can show extraordinary circumstances
 8 that warrant a continuance of the stay, including the existence of
 9 a legal challenge that prevents the compacting state from opting
 10 out. A stay may be terminated by the commission on notice that the
 11 rulemaking process has been terminated.

12 (g) Not later than thirty (30) days after a rule or operating
 13 procedure is adopted, any person may file a petition for judicial
 14 review of the rule or operating procedure. However, the filing of a
 15 petition shall not stay or otherwise prevent the rule or operating
 16 procedure from becoming effective unless the court finds that the
 17 petitioner has a substantial likelihood of success. The court shall
 18 give deference to the actions of the commission consistent with
 19 applicable law and shall not find the rule or operating procedure
 20 to be unlawful if the rule or operating procedure represents a
 21 reasonable exercise of the commission's authority.

22 Sec. 9. (a) The commission shall adopt rules establishing
 23 conditions and procedures for public inspection and copying of the
 24 commission's information and official records, except information
 25 and records involving the privacy of individuals and trade secrets
 26 of insurers. The commission may adopt additional rules under
 27 which the commission may make available to federal and state
 28 agencies, including law enforcement agencies, records and
 29 information otherwise exempt from disclosure, and may enter into
 30 agreements with these agencies to receive or exchange information
 31 or records subject to nondisclosure and confidentiality provisions.

32 (b) Except as to privileged records, data, and information, the
 33 laws of any compacting state pertaining to confidentiality or
 34 nondisclosure shall not relieve any compacting state commissioner
 35 of the duty to disclose any relevant records, data, or information
 36 to the commission. However, disclosure to the commission shall not
 37 be considered to waive or otherwise affect any confidentiality
 38 requirement, and, except as otherwise expressly provided in this
 39 chapter, the commission shall not be subject to the compacting
 40 state's laws pertaining to confidentiality and nondisclosure with
 41 respect to records, data, and information in the commission's
 42 possession. Confidential information of the commission remains

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confidential after the information is provided to any commissioner.

(c) The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify any noncomplying compacting state in writing of the noncomplying compacting state's noncompliance with commission bylaws, rules, or operating procedures. If a noncomplying compacting state fails to remedy the noncomplying compacting state's noncompliance within the time specified in the notice of noncompliance, the compacting state is considered to be in default as set forth in section 16 of this chapter.

(d) The commissioner of any state in which an insurer is authorized to do business or is conducting the business of insurance shall continue to exercise the commissioner's authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the compact is governed by the following:

(1) With respect to the commissioner's market regulation of a product or an advertisement that is approved or certified to the commission, the content of the product or advertisement does not constitute a violation of the provisions, standards, or requirements of the compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission.

(2) Before a commissioner may bring an action for violation of a provision, standard, or requirement of the compact related to the content of an advertisement not approved or certified to the commission, the commission or an authorized commission officer or employee must authorize the action. However, authorization under this subdivision does not require:

(A) notice to the insurer;

(B) opportunity for hearing; or

(C) disclosure of:

(i) requests for authorization; or

(ii) records of the commission's action on a request described in item (i).

Sec. 10. The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and that may arise between two (2) or more

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1 compacting states, or between compacting states and
 2 noncompacting states, and the commission shall adopt an operating
 3 procedure providing for resolution of any disputes.

4 Sec. 11. (a) Insurers and third party filers seeking to have a
 5 product approved by the commission shall file the product with
 6 and pay applicable filing fees to the commission. Nothing in this
 7 chapter restricts or otherwise prevents an insurer from filing the
 8 insurer's product with the insurance department in any state
 9 where the insurer is licensed to conduct the business of insurance,
 10 and the filing is subject to the laws of the states where filed.

11 (b) The commission shall establish appropriate filing and review
 12 processes and procedures under commission rules and operating
 13 procedures. Notwithstanding any provision in this chapter to the
 14 contrary, the commission shall adopt rules to establish conditions
 15 and procedures under which the commission will provide public
 16 access to product filing information. In establishing any rules, the
 17 commission shall consider the interests of the public in having
 18 access to the information as well as protection of personal medical
 19 and financial information and trade secrets that may be contained
 20 in a product filing or supporting information.

21 (c) Any product approved by the commission may be sold or
 22 otherwise issued in the compacting states in which the insurer is
 23 legally authorized to do business.

24 Sec. 12. (a) Not later than thirty (30) days after the commission
 25 has given notice of a disapproved product or advertisement filed
 26 with the commission, the insurer or third party filer whose filing
 27 was disapproved may appeal the determination to a review panel
 28 appointed by the commission. The commission shall adopt rules to
 29 establish procedures for appointing the review panels and provide
 30 for notice and hearing. An allegation that the commission, in
 31 disapproving a product or an advertisement filed with the
 32 commission, acted arbitrarily, capriciously, or in a manner that is
 33 an abuse of discretion or otherwise not in accordance with the law,
 34 is subject to judicial review in accordance with section 3(e) of this
 35 chapter.

36 (b) The commission may monitor, review, and reconsider
 37 products and advertisement subsequent to their filing or approval
 38 upon a finding that the product does not meet the relevant uniform
 39 standard. If appropriate, the commission may withdraw or modify
 40 the commission's approval after proper notice and hearing, subject
 41 to the appeal process in subsection (a).

42 Sec. 13. (a) The commission shall pay or provide for the

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1 payment of the reasonable expenses of the commission's
 2 establishment and organization. To fund the cost of the
 3 commission's initial operations, the commission may accept
 4 contributions and other forms of funding from the NAIC,
 5 compacting states, and other sources. Contributions and other
 6 forms of funding from other sources shall be of such a nature that
 7 the independence of the commission concerning the performance
 8 of the commission's duties is not compromised.

9 (b) The commission shall collect a filing fee from each insurer
 10 and third party filer filing a product with the commission to cover
 11 the cost of the operations and activities of the commission and the
 12 commission's staff in an amount sufficient to cover the
 13 commission's annual budget.

14 (c) The commission's budget for a fiscal year may not be
 15 approved until the commission's budget has been subject to notice
 16 and comment as set forth in section 8(b) of this chapter.

17 (d) The commission is exempt from all taxation in and by the
 18 compacting states.

19 (e) The commission shall not pledge the credit of any
 20 compacting state, except by and with the appropriate legal
 21 authority of that compacting state.

22 (f) The commission shall keep complete and accurate accounts
 23 of all the commission's internal receipts, including grants and
 24 donations, and disbursements of all funds under the commission's
 25 control. The internal financial accounts of the commission are
 26 subject to the accounting procedures established under the
 27 commission's bylaws. The financial accounts and reports, including
 28 the system of internal controls and procedures of the commission,
 29 shall be audited annually by an independent certified public
 30 accountant. Upon the determination of the commission, but not less
 31 frequently than every three (3) years, the review of the independent
 32 auditor shall include a management and performance audit of the
 33 commission. The commission shall make an annual report, to the
 34 governor and legislature of the compacting states, including a
 35 report of the independent audit. The commission's internal
 36 accounts are not confidential and such internal account materials
 37 may be shared with the commissioner of any compacting state
 38 upon request. However, work papers related to internal or
 39 independent audit and information regarding the privacy of
 40 individuals and proprietary information of insurers, including
 41 trade secrets, is confidential.

42 (g) No compacting state shall have any claim to or ownership of

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any property held by or vested in the commission or to any commission funds held under the provisions of this compact.

Sec. 14. (a) Any state is eligible to become a compacting state. The compact becomes effective and binding upon legislative enactment of the compact into law by two (2) compacting states. However, the commission shall become effective for purposes of adopting uniform standards for, reviewing, and giving approval or disapproval of products filed with the commission that satisfy applicable uniform standards only after twenty-six (26) states are compacting states or, alternatively, by states representing greater than forty percent (40%) of the premium volume for life insurance, annuity, disability income, and long term care insurance products, based on records of the NAIC for the prior year. Thereafter, it becomes effective and binding as to any other compacting state upon enactment of the compact into law by that state.

(b) Amendments to the compact may be proposed by the commission for enactment by the compacting states. An amendment does not become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

Sec. 15. (a) Once effective, the compact continues in force and remains binding upon each compacting state. However, a compacting state may withdraw from the compact by enacting a statute specifically repealing the statute that enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal does not apply to any product filings approved or self-certified, or any advertisement of products, on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state, unless the approval is rescinded by the withdrawing state as provided in subsection (e).

(c) The commissioner of the withdrawing state shall immediately notify the management committee in writing upon the introduction of legislation repealing this compact in the withdrawing state.

(d) The commission shall notify the other compacting states of the introduction of the legislation within ten (10) days after the commission's receipt of notice of the introduction of the legislation.

(e) The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which

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1 extend beyond the effective date of withdrawal, except to the extent
 2 those obligations may have been released or relinquished by
 3 mutual agreement of the commission and the withdrawing state.
 4 The commission's approval of products and advertisement before
 5 the effective date of withdrawal shall continue to be effective and
 6 be given full force and effect in the withdrawing state, unless
 7 formally rescinded by the withdrawing state in the same manner
 8 as provided by the laws of the withdrawing state for the
 9 prospective disapproval of products or advertisement previously
 10 approved under state law.

11 (f) Reinstatement following withdrawal of any compacting state
 12 occurs on the effective date of the withdrawing state reenacting the
 13 compact.

14 Sec. 16. (a) If the commission determines that any compacting
 15 state has at any time defaulted in the performance of any of the
 16 compacting state's obligations or responsibilities under this
 17 compact, the bylaws, or adopted rules or operating procedures,
 18 after notice and hearing as set forth in the bylaws, all rights,
 19 privileges, and benefits conferred by this compact on the defaulting
 20 state shall be suspended from the effective date of default as fixed
 21 by the commission. The grounds for default include:

22 (1) failure of a compacting state to perform its obligations or
 23 responsibilities; or

24 (2) any other grounds designated in commission rules.

25 The commission shall immediately notify the defaulting state in
 26 writing of the defaulting state's suspension pending a cure of the
 27 default. The commission shall stipulate the conditions and the
 28 period within which the defaulting state must cure the defaulting
 29 state's default. If the defaulting state fails to cure the default within
 30 the period specified by the commission, the defaulting state shall be
 31 terminated and the compact and all rights, privileges, and benefits
 32 conferred by this compact shall be terminated on the effective date
 33 of termination.

34 (b) Product approvals by the commission, product
 35 self-certifications, or any advertisement in connection with the
 36 product that is in force on the effective date of termination shall
 37 remain in force in the defaulting state in the same manner as if the
 38 defaulting state had withdrawn voluntarily under section 15 of this
 39 chapter.

40 (c) Reinstatement following termination of any compacting state
 41 requires a reenactment of the compact.

42 Sec. 17. The compact dissolves effective on the date of the

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1 withdrawal or default of the compacting state that reduces
 2 membership in the compact to one (1) compacting state. Upon the
 3 dissolution of this compact, the compact is void and is of no further
 4 force or effect, and the business and affairs of the commission shall
 5 be wound up and any surplus funds shall be distributed in
 6 accordance with the bylaws.

7 **Sec. 18.** The provisions of this compact are severable and if any
 8 phrase, clause, sentence, or provision is considered unenforceable,
 9 the remaining provisions of the compact are enforceable. The
 10 provisions of this compact shall be liberally construed to effectuate
 11 the compact's purposes.

12 **Sec. 19. (a)** Nothing in this chapter prevents the enforcement of
 13 any other law of a compacting state, except as provided in
 14 subsection (b).

15 **(b)** For a product approved or certified to the commission, the
 16 rules, uniform standards, and any other requirements of the
 17 commission constitute the exclusive provisions applicable to the
 18 content, approval, and certification of the products. For an
 19 advertisement that is subject to the commission's authority, any
 20 rule, uniform standard, or other requirement of the commission
 21 that governs the content of the advertisement constitutes the
 22 exclusive provision that a commissioner may apply to the content
 23 of the advertisement. However, no action taken by the commission
 24 shall abrogate or restrict:

- 25 (1) the access of any person to state courts;
- 26 (2) remedies available under state law related to breach of
- 27 contract, tort, or other laws not specifically directed to the
- 28 content of the product;
- 29 (3) state law relating to the construction of insurance
- 30 contracts; or
- 31 (4) the authority of the attorney general of the state, including
- 32 maintaining actions or proceedings, as authorized by law.

33 **(c)** All insurance products filed with individual states are
 34 subject to the laws of those states.

35 **Sec. 20. (a)** All lawful actions of the commission, including all
 36 rules and operating procedures adopted by the commission, are
 37 binding upon the compacting states.

38 **(b)** All agreements between the commission and the compacting
 39 states are binding in accordance with the terms of the agreements.

40 **(c)** Upon the request of a party to a conflict over the meaning or
 41 interpretation of commission actions and upon a majority vote of
 42 the compacting states, the commission may issue advisory opinions

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1 regarding the meaning or interpretation in dispute.

2 (d) If any provision of this compact exceeds the constitutional
3 limits imposed on the legislature of any compacting state, the
4 obligations, duties, powers, or jurisdiction sought to be conferred
5 by that provision upon the commission is ineffective as to that
6 compacting state, and those obligations, duties, powers, or
7 jurisdiction shall remain in the compacting state and shall be
8 exercised by the agency of the compacting state to which those
9 obligations, duties, powers, or jurisdiction are delegated by law in
10 effect at the time this compact becomes effective.

11 SECTION 2. IC 34-30-2-116.9 IS ADDED TO THE INDIANA
12 CODE AS A NEW SECTION TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2004]: Sec. 116.9. IC 27-8-31-6(g)
14 (Concerning the interstate insurance product regulation
15 commission).

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